Filed 5/29/19 P. v. Robinson CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. DAVID ALLEN ROBINSON, Defendant and Appellant.	A155304 (Solano County Super. Ct. No. VCR230664)

Defendant David Allen Robinson appeals after pleading no contest to carrying a dirk or dagger. (Pen. Code, § 21310.) He contends the trial court erred in denying his motion to suppress the knife seized by police that supported this conviction because he was stopped and detained in violation of his rights against unreasonable searches and seizures under the Fourth Amendment. We find that the seizure of the knife was attenuated by the search condition that was part of Robinson's probation terms and affirm the judgment.

BACKGROUND

I.

Charges and Pre-Plea Motions

Robinson was arrested on October 17, 2017, for carrying a dirk or dagger in violation of Penal Code section 21310 after a search revealed a concealed switchblade knife on his person. The People filed a complaint alleging the violation the next day.

Robinson filed a motion to suppress the concealed switchblade knife. The trial court held a hearing on the motion at which Vallejo Police Officer James Macho, Jr., who

seized the knife, testified for the prosecution. Robinson testified on his own behalf. Their testimony is summarized below.

II.

The Encounter

A. Officer Macho's Testimony

Officer Macho was dispatched at 4:18 a.m. to Spring Road and Rollingwood Drive in Vallejo after someone reported three males dressed in dark clothing walking around. He went to that intersection but did not see anyone who matched the description, so he drove to nearby places where people hung out.

Macho drove past a 7-Eleven, where employees had previously called multiple times about loiterers, panhandlers and others causing disturbances. He spotted two men who were wearing dark clothing and sitting on a retaining wall. One looked like he was holding a coffee cup. Macho did not see either man enter or exit the 7-Eleven. Macho "flipped" his car around, entered the parking lot and parked about eight or nine feet away from the two men. His parked car would not have prevented them from leaving. He never activated his lights or sirens.

Macho exited his patrol car and approached, stopping about six or seven feet away from the men so as not to get too close. He told them he was talking to them because his department had received a call about some men wearing dark clothing walking near a particular intersection and asked if they had been there. They replied that they had not. He informed them that they were loitering in front of the 7-Eleven, which was suspicious. Robinson told Macho that the woman in 7-Eleven could confirm he had just made a purchase.

Macho next asked the men for their names, and they asked why he needed that information. He said wanted to figure out who was "out here" before asking whether either was on probation or parole. Robinson admitted he was on probation. Macho informed Robinson he had to cooperate with law enforcement because he was on probation. Robinson gave Macho his name, and Macho confirmed with dispatch that Robinson was on active probation with a search term relating to a prior weapons offense.

Macho estimated that a minute to a minute and a half elapsed between his initial contact and dispatch's confirmation of Robinson's active probation search term. Macho determined Robinson's companion was not on probation and told him he "wasn't really detained" and could "take off."

After confirming Robinson's probation search term, Macho handcuffed Robinson because he knew "people that have been arrested in the past with weapons often have weapons on them." He searched Robinson and found a "fixed-blade knife that was concealed by [Robinson's] jacket and sweatshirt on the left side of his front waist in a black sheath." Macho later clarified that the sheath was hanging from Robinson's belt but was concealed by Robinson's black, baggy hoodie.

Macho advised Robinson of his *Miranda* rights. Robinson acknowledged he understood his rights and answered Macho's questions. According to Macho, Robinson said he did not realize the knife was concealed and did not carry it as a weapon. Rather, Robinson told Macho, he collected knives and had other knives on his person that were "completely legal."

Throughout his interactions with the two men, Macho never raised his voice, blocked the path of either man, or accused them of committing any crimes. However, he did ask Robinson to take his hands out of his pockets.

B. Robinson's Testimony

Robinson's testimony differed from Macho's testimony. Robinson testified that he went to 7-Eleven, purchased two burritos, and heated them up in the microwave. He gave one to his friend Emerson, who was already outside the 7-Eleven, and sat on the retaining wall with him as they ate. After he finished his burrito, Robinson got up and began to walk back to his house.

As he was getting off the retaining wall, the patrol car pulled up about eight feet away. The officer exited his patrol vehicle and asked for Robinson's name. Robinson told the officer he did not have to give his name. The officer responded that he was loitering. Robinson informed the officer that he was not loitering because he had just purchased two burritos. The officer again asked for their names. Robinson discussed

whether he needed to provide the officer with his name for a few minutes before doing so.

After learning his name, the officer asked whether Robinson was on probation. The officer asked him to put his hands on his head. Robinson tried to leave at some point but was unable to because the officer "said Eh" and he stayed.

Robinson admitted that the officer never yelled at him, drew his weapon, activated the lights on his patrol vehicle or used a spotlight. Nor did the officer order him to stay, physically block his path or touch him except for the search.

III.

Trial Court's Ruling

The trial court found Macho more credible than Robinson. It concluded the encounter was consensual under the totality of circumstances because the officer was polite, did not use force and inquired about probation terms before searching. It also found Macho's statement that Robinson was required to cooperate by providing his name after Robinson admitted to being on probation was not unreasonable under the Fourth Amendment.

The trial court alternatively concluded that the Vallejo Municipal Code section 7.91.020, which provides that "[n]o person may delay, linger or idle about any public parking lot or facility of any business premises, or on any privately owned or leased parking lot thereof without lawful business for being present," gave Macho objectively reasonable grounds to investigate. Accordingly, the trial court denied Robinson's suppression motion.

IV.

Change of Plea

Robinson eventually pled no contest and was sentenced to 16 months in custody.

DISCUSSION

I.

The Motion to Suppress Was Properly Denied.

Robinson asserts the concealed switchblade seized from his person was the result of an unlawful detention that was neither consensual nor supported by reasonable suspicion. The People argue Robinson's probation search condition attenuated any illegality even if the contact constituted an impermissible seizure.

A. Standard of Review

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.) Where the facts are essentially undisputed, we independently determine the constitutionality of the challenged search or seizure. (*People v. Balint* (2006) 138 Cal.App.4th 200, 205.) The trial court's ruling may be affirmed if it was correct on any theory, even if we conclude the trial court's reasoning was incorrect. (*People v. McDonald* (2006) 137 Cal.App.4th 521, 529.)

B. The Initial Contact

Robinson contends Macho's contact was neither consensual nor a temporary detention based on reasonable or articulable suspicion.

"Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty. [Citations.] Our present inquiry concerns the distinction between consensual encounters and detentions. Consensual encounters do not trigger Fourth Amendment scrutiny. [Citation.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime." (*In re*

Manuel G. (1997) 16 Cal.4th 805, 821.) During a consensual encounter, a law enforcement officer may approach an individual in a public place, ask that if that individual is willing to answer questions, and ask questions if that person is willing to answer questions without violating the Fourth Amendment assuming that person is not detained even momentarily. (*People v. Brown* (2015) 61 Cal.4th 968, 974; *Florida v. Royer* (1983) 460 U.S. 491, 497.) "[I]n some cases, a person may not wish to leave the location of a police encounter but may also not wish to speak with, or otherwise comply with, an officer's request. In such a circumstance, the 'coercive effect of the encounter' is better measured by asking whether 'a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter.' " (*Brown*, at p. 976, citing *Florida v. Bostick* (1991) 501 U.S. 429, 436.)

A show of authority or use of physical force will convert a consensual contact into a seizure under the Fourth Amendment if " 'in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.' " (*Brendlin v. California* (2007) 551 U.S. 249, 255, citing *United States v. Mendenhall* (1980) 446 U.S. 544, 554 (*Mendenhall*).) "Th[is] test's objective standard—looking to the reasonable man's interpretation of the conduct in question—allows the police to determine in advance whether the conduct contemplated will implicate the Fourth Amendment." (*Michigan v. Chesternut* (1988) 486 U.S. 567, 574.) In determining whether an encounter is consensual or constitutes a detention, a court should consider the totality of the circumstances rather than adopt any per se rules about particular facts. (*People v. Linn* (2015) 241 Cal.App.4th 46, 58 (*Linn*), citing *Florida v. Bostick*, *supra*, 501 U.S. at pp. 437-438.)

"Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." (*Mendenhall*, *supra*, 446 U.S. at p. 554.) For example, accusatory questions or actual commands indicate detention. (*Linn*, *supra*, 241 Cal.App.4th at

p. 58.) "[O]ther relevant factors include the time and place of the encounter, whether the police indicated the defendant was suspected of a crime, whether the police retained the defendant's documents, and whether the police exhibited other threatening behavior." (*Ibid.*) In contrast, "[w]hen the actions of the police do not show an unambiguous intent to restrain or when an individual's submission to a show of governmental authority takes the form of passive acquiescence, there needs to be some test for telling when a seizure occurs in response to authority and when it does not." (*Brendlin v. California*, *supra*, 551 U.S. at p. 255.)

The Fourth Amendment only prohibits seizures of persons, including brief investigative stops, when they are "unreasonable." (*United States v. Sharpe* (1985) 470 U.S. 675, 682; *Terry v. Ohio* (1968) 392 U.S. 1, 19 & fn. 16.) Whether that seizure is permissible under the Fourth Amendment will then turn on whether articulable suspicion or probable cause exists for the detention and the length of that detention. (*People v. Souza* (1994) 9 Cal.4th 224, 229.) A temporary detention is " ' "reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." ' " (*People v. Lindsey* (2007) 148 Cal.App.4th 1390, 1396, citing *People v. Coulombe* (2000) 86 Cal.App.4th 52, 56.) The United States Supreme Court characterized "reasonable" or "articulable" suspicion as a standard less demanding than probable cause "not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." (*Alabama v. White* (1990) 496 U.S. 325, 330.)

The evidence points in two directions regarding whether Macho's contact with Robinson was consensual. Macho approached the two men without activating his siren, overhead lights or spotlight, or making any other show of authority, and parked his patrol car far enough away to avoid blocking the men from leaving. Macho never touched Robinson except to conduct the search, and he did the pat-down search only after

confirming Robinson was on probation with a search term. (See *Mendenhall*, *supra*, 446 U.S. at p. 554.) The closest thing to a command that Macho gave was to ask Robinson to keep his hands out of his pockets. (See *id.*) All of these facts suggest the stop was consensual. On the other hand, Macho's accusation that the two were loitering before asking for their names tends to indicate they were not free to disengage. (See *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 791, fn. 11.) His request that they identify themselves and provide their probation status may have led them to believe compliance was not optional. (See *Mendenhall*, at p. 554.)

If we concluded this was a temporary detention, it would not appear that Macho had a reasonable suspicion to stop Robinson and his companion for loitering because there was no evidence one way or the other as to whether they had a lawful reason for being present. Macho had barely observed them before he made contact, and more would have been necessary to form a reasonable suspicion that they were loitering. (Cf. *People v. Huggins* (2006) 38 Cal.4th 175, 242 [defendant's "loitering in a high-crime residential area at night" was factor supporting investigative detention].) Further, although Macho contacted Robinson shortly after receiving a dispatch about similarly dressed males in the vicinity, the call did not provide reasonable suspicion that Robinson and his friend were violating any law. (See *People v. Lindsey*, *supra*, 148 Cal.App.4th at p. 1396.)

Ultimately, we need not determine whether the contact was consensual or whether the facts gave rise to a reasonable suspicion that Robinson was loitering. As we shall explain, the pat-down search was authorized by Robinson's probation search condition even assuming arguendo it occurred during a detention that was otherwise unlawful.

C. Robinson's Probation Status Attenuated Any Unlawful Detention.

The People contend that any illegal detention of Robinson was attenuated by his probation status.

" ' "[N]ot . . . all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police." ' " (*People v. Brendlin* (2008) 45 Cal.4th 262, 268 (*Brendlin*), quoting *People v. Sims* (1993) 5 Cal.4th 405, 445 and *Wong Sun v. United States* (1963) 371 U.S. 471, 487-488.) "[B]ut-for cause, or

'causation in the logical sense alone,' [citation], can be too attenuated to justify exclusion." (*Hudson v. Michigan* (2006) 547 U.S. 586, 592.)

Our high court addressed attenuation from a search incident to a lawful arrest during an unlawful stop in *People v. Brendlin*. In that case, a deputy spotted a car with expired registration tags and radioed dispatch to check its registration status. (*Brendlin, supra,* 45 Cal.4th at p. 265.) Dispatch informed the deputy that the car's registration had expired but that a renewal application was "in process." (*Ibid.*) The deputy pulled over the car to investigate and asked its two occupants to identify themselves. (*Id.* at pp. 265-266.) The passenger identified himself as Bruce Brendlin. (*Id.* at p. 266.) The deputy returned to his vehicle and verified that Brendlin had an outstanding no-bail warrant for his arrest. (*Ibid.*) The deputy arrested Brendlin, searched him incident to arrest, and found a syringe cap. (*Ibid.*) He searched the driver and found two baggies of marijuana, one baggie of methamphetamine and two syringes on the driver's person. (*Ibid.*) Materials used to manufacture methamphetamine were also recovered from the car's back seat. (*Ibid.*)

Brendlin contended he was impermissibly seized when the deputy pulled over the car in which he was a passenger. (*Brendlin, supra,* 45 Cal.4th at p. 267.) The United States Supreme Court agreed with Brendlin that "a traffic stop subjects a passenger, as well as a driver, to a seizure within the meaning of the Fourth Amendment." (*Ibid.*, citing *Brendlin v. California, supra,* 551 U.S. at p. 251.) It remanded the case to the California Supreme Court to determine whether suppression turned on any other issue. (*Brendlin, supra,* 45 Cal.4th at p. 267.)

After remand, our high court "granted the Attorney General's request that the parties be directed to file supplemental briefing as to whether the existence of [Brendlin's] outstanding arrest warrant—which was discovered *after* the unlawful traffic stop but *before* the search of his person or the vehicle—dissipated the taint of the illegal seizure and rendered suppression of the evidence seized unnecessary." (*Brendlin, supra,* 45 Cal.4th at p. 267.) The Attorney General thereafter argued that the primary illegality of the stop was attenuated by Brendlin's arrest warrant. (*Id.* at p. 267.)

Acknowledging that the traffic stop was unlawful, our high court stated that " '[t]he question before [it was] whether the chain of causation proceeding from the unlawful conduct [had] become so attenuated or [had] been interrupted by some intervening circumstance so as to remove the "taint" imposed upon that evidence by the original illegality.' " (*Brendlin*, *supra*, 45 Cal.4th at p. 269, quoting *United States v. Crews* (1980) 445 U.S. 463, 471.) It observed that other federal and state courts had already addressed the framework for attenuation resulting from an unlawful arrest. (*Brendlin*, at p. 269.) Our high court agreed with the other courts' decisions that the " '[r]elevant factors in this "attenuation" analysis include the temporal proximity of the Fourth Amendment violation to the procurement of the challenged evidence, the presence of intervening circumstances, and the flagrancy of the official misconduct.' " (*Ibid.*) It then addressed each of these factors.

Regarding temporal proximity, the court recognized that this factor is most relevant when there is a "logical connection" between the illegal police conduct and the defendant's response because "the closer these two events are in time, the more likely the defendant's response was influenced by the illegality or that the illegality was exploited." (*Brendlin*, *supra*, 45 Cal.4th at p. 270.) To illustrate this point, *Brendlin* explained that temporal proximity is most relevant when the alleged attenuating factor was a volitional act by the defendant, such as resisting arrest or flight, because in such cases a brief lapse of time makes it more likely the seizure was the product of the detention itself. (*Ibid.*) "Conversely, where the intervening circumstance is a lawful arrest under an outstanding arrest warrant, the defendant's conduct is irrelevant, and the police cannot be said to have exploited the illegal seizure that preceded the discovery of the outstanding warrant." (*Ibid.*) Nevertheless, the court noted that the case law was split as to whether temporal proximity was relevant when the intervening factor was an arrest warrant. (*Ibid.*) So, rather than opining on the relevance of the first factor in *Brendlin*, it noted that the two other factors outweighed the first factor. (*Ibid.*)

Turning to the second factor, the court noted that intervening circumstances not reasonably subject to interpretation or abuse tended to dissipate the taint caused by an

illegal stop. (*Brendlin*, *supra*, 45 Cal.4th at p. 271.) Thus, the existence of an arrest warrant for a passenger during a traffic stop is "independent of the circumstances that led the officer to initiate the traffic stop." (*Ibid.*) This factor favored attenuation. (*Ibid.*)

The court observed that the third factor—the flagrancy of official misconduct—is generally the most important because " 'it is directly tied to the purpose of the exclusionary rule—deterring police misconduct.' " (*Brendlin*, *supra*, 45 Cal.4th at p. 271.) Applying this factor, the court concluded that, while the deputy's decision to stop the car to investigate the vehicle's registration was insufficient to justify a temporary detention, the "insufficiency was not so obvious as to make one question [the deputy's] good faith in pursuing an investigation of what he believed to be a suspicious registration, nor [did] the record show that he had a design and purpose to effect the stop 'in the hope that something [else] might turn up.' " (*Ibid.*) It thus declined to find flagrant official misconduct where the officer's reason was neither pretextual to conduct a search nor so insufficient as to question the officer's good faith. (*Id.* at pp. 271-272.) Based on its analysis of the three factors, the court concluded that Brendlin's "outstanding warrant sufficiently attenuated the connection between the unlawful traffic stop and the subsequent discovery of the drug paraphernalia." (*Id.* at p. 272.)

After our high court decided *Brendlin*, this court applied the same factors in concluding that an illegal detention can be attenuated by a defendant's probation search condition. (*People v. Durant* (2012) 205 Cal.App.4th 57, 66 (*Durant*).) Two officers from a gang task force unit stopped the car Durant was driving for a traffic violation. (*Id.* at p. 60.) During that stop, one of the officers learned that Durant was subject to a probation search condition. (*Ibid.*) The next evening, the same officers and a sergeant were on patrol in the same area when they saw Durant's car waiting in the left turn lane. (*Id.* at pp. 60-61.) When the left turn light turned green, Durant's car turned without signaling. (*Id.* at p. 61.) One of officers believed this was a violation of Vehicle Code section 22108, which required vehicles to signal continuously at least 100 feet before turning left or right. (*Durant*, at p. 61.) Without knowing who was driving the car, the officer pulled it over. (*Ibid.*) When he approached Durant, who was in the driver's seat,

he confirmed Durant's identity and that he was still on probation. (*Ibid.*) Durant denied having anything illegal and gave permission to search his car. (*Ibid.*) During a pat-down search, the officer uncovered a loaded handgun in Durant's waistband. (*Ibid.*)

Declining to determine whether the officer had reasonable suspicion to stop Durant, this court applied the three factors ultimately adopted in *Brendlin* and determined the probation search condition was an attenuating circumstance independent of the traffic stop. (*Durant, supra*, 205 Cal.App.4th at pp. 65-66.) Regarding the first factor, we noted that, although the officer conducted the pat-down search shortly after the traffic stop, he did so only after confirming Durant was subject to a probation search term. (*Ibid.*) As to the second factor, we observed that the probation search condition "was completely independent of the circumstances leading to the traffic stop" (*id.* at p. 66), and operated as a " ' "complete waiver of that probationer's [Fourth Amendment] rights, save only his [or her] right to object to harassment or searches conducted in an unreasonable manner." ' " (*Id.* at p. 64.) The last factor—the flagrancy of any official misconduct—weighed in favor of applying the attenuation doctrine because, while the traffic stop lacked reasonable suspicion, the officer did not purposefully engage in unlawful conduct or act in an "arbitrary, capricious, or harassing manner." (*Id.* at p. 66.) We explained that "[t]he purpose of the exclusionary rule—deterring police misconduct—is not served by suppressing the gun that was seized simply because [the officer] did not recognize appellant as a probationer until immediately after he initiated a traffic stop made in good faith." (*Ibid.*, citing *People v. Wilkins* (1986) 186 Cal.App.3d 804, 806-807.) We therefore concluded that Durant's probation search term attenuated any detention that was otherwise unlawful.

Applying the same three factors to the present case, we conclude that any alleged illegal detention was attenuated by Robinson's search condition. First, concerning the temporal proximity of the alleged Fourth Amendment violation to the procurement of the challenged evidence, the search occurred within a couple of minutes of Robinson's detention. However, as in *Durant*, Macho searched Robinson only after learning of his probation condition. Macho could not have conjured up the probation search term to

justify his search of Robinson. Relatedly, concerning the intervening circumstance factor, the existence of a probation term is an independent intervening circumstance that Macho could not subject to interpretation. Either Robinson had a valid probation search term that allowed the search, or he did not. Last, the flagrancy of misconduct factor weighs in favor of attenuation. Macho contacted Robinson and his friend after dispatch had received a call reporting suspicious young men wearing dark clothes were in that area. He acted to investigate in response to the call and not for pretextual or bad faith reasons or in the hope that something else might turn up. Macho also took steps to keep the contact consensual, such as not using his vehicle's lights or siren, parking several feet away from the two men, standing several feet from them, speaking in a polite tone, and avoiding commands. (See *Mendenhall, supra,* 446 U.S. at p. 554; *Linn, supra,* 241 Cal.App.4th at p. 58.) Even if his statements that the two men were loitering elevated the contact to a detention, Macho's actions were not undertaken in an "arbitrary, capricious, or harassing manner." (*Durant, supra,* 205 Cal.App.4th at p. 66.) As in *Durant*, Macho's discovery of Robinson's probation search condition attenuated the taint of any Fourth Amendment violation that would otherwise justify suppression under the exclusionary rule.

Robinson attempts to distinguish *Durant* by asserting that the detention here occurred without any observation of criminal activity while Durant's stop was based on reasonable suspicion that Durant had violated the Vehicle Code. (*Durant, supra,* 205 Cal.App.4th at p. 64.) But in *Durant,* we declined to determine whether the stop was based on reasonable suspicion. (*Ibid*.) Instead, we decided the seizure was attenuated by Durant's probation term without deciding whether the detention was otherwise unlawful. (*Ibid.*)

Robinson also urges this court to conclude that his case is more akin to *People v. Bates* (2013) 222 Cal.App.4th 60 (*Bates*) than *Durant*. In *Bates*, a sheriff's deputy stopped a car solely on a "hunch" that its occupants might have been involved in a theft nearly two hours earlier. (*Bates,* at pp. 63–64, 71.) Bates, who was in the vehicle, identified himself. (*Id.* at p. 64.) Although the deputy did not know Bates, another

officer had told the him that someone named Bates was subject to a probation search condition. (*Id.* at p. 63.) Based on this information, the deputy handcuffed him, searched him and discovered evidence of the theft. (*Id*. at p. 64.)

The Sixth District Court of Appeal concluded that "the unlawfulness of a suspicionless vehicle detention is not retroactively cured when one of the passengers turns out to be a probationer with a search condition." (*Bates, supra,* 222 Cal.App.4th at p. 62.) "Unlike the officer in *Durant,* who stopped a car based on a perceived traffic violation, [the deputy] stopped the . . . car without any observation of possible wrongdoing. . . . [W]e find his suspicionless stop . . . nonetheless purposeful for our attenuation analysis." (*Id.* at p. 71.) The court concluded that the evidence obtained should have been suppressed "[b]ased on this finding, together with [its] determination that defendant's probation search condition was an insufficient attenuating circumstance." (*Ibid*.) It declined to extend our reasoning in *Durant* by distinguishing an arrest warrant from a probation search condition, which it described as a "discretionary [law] enforcement tool." (*Id.* at p. 70.)

While *Durant* and *Bates* are somewhat in tension, both are consistent with our conclusion here that when police have not engaged in flagrant or purposeful conduct, the discovery of a defendant's probation search condition is an intervening circumstance supporting the application of the attenuation doctrine. Moreover, unlike *Bates*, where law enforcement stopped a vehicle on a hunch a couple hours after the crime and without observation of wrongdoing (*Bates, supra*, 222 Cal.App.4th at p. 71), Macho contacted Robinson and his friend based on and within minutes of a call reporting three suspicious men wearing dark clothing in the vicinity at 4:18 a.m. And, as previously discussed, Macho made efforts to keep the contact consensual.

In short, Robinson's probation search condition, in combination with the lack of any flagrant or purposeful misconduct by Macho, sufficiently dissipated the taint that may have flowed from any unlawful detention. Because the attenuation doctrine applies, the motion to suppress was properly denied.

DISPOSITION

Judgment is affirmed.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.

People v. Robinson (A155304)